IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4089 OF 1989

Shri Chhatrapati Sahakari Sakhar
Karkhana Ltd.,
Bhavaninagar, Tal:Idapur,
Dist.Pune 413 104 ...Petitioner.

V/s.

1. Dy.Commissioner of Income Tax
   Spl. Range I,
   Aayakar Bhavan, Sadhu Vaswani Road,
   Pune 411 001.
2. Central Board of Direct Taxes,
   North Block,
   New Delhi 110 001
3. The Commissioner of Income Tax
   Aayakar Bhavan, 12 Sadhu Vaswani Road,
   Pune 411 001.
   And.
4. Union of India ...Respondents.

Mr.S.N.Inamdar for the Petitioner.
Dr.P.Daniel for the Respondent.

CORAM: S.RADHAKRISHNAN &
J.H.BHATIA, JJ.
DATE : 5th July, 2005.

ORAL JUDGMENT: (Per J.H.Bhatia,J.)

1. The Petitioner is the Co-operative Sugar Factory and its Income Tax assessment for the years 1972-73 to 1983-84 were settled regularly. On 28/3/89, the Deputy Commissioner of Income Tax, the Respondent no.1, issued notices to the Petitioner to re-assess the income of the said Assessment Years. The Respondent no.1 called upon the Petitioner to submit the returns for the said

Assessment Years in the prescribed format within 30 days. The Petitioner complied the said notice. In the re-assessment, the Respondent No.1 relied upon the decision of the Supreme Court in **Commissioner of Income Tax v. Bazpur Sugar Factory Ltd. 1988 172 ITR 321** and held that the deductions on account of Non-refundable deposits, Area Development Fund, Hutment Fund and C.M.s Relief Fund were liable to be added to the income as trading receipts. The Petitioner addressed letter to the Respondent no.1 contending that the assessment could not be re-opened after expiry of 4 years, after finalisation of the assessment as no material was concealed by the Petitioner in the income-tax returns. Finally, the Petitioner filed the present Petition, challenging the action of the Respondent No.1. The Petitioner seeks writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, order or direction under Article 226 of the Constitution of India and to quash and set aside the said notices for the assessment years 1972-73 to 1983-84 and also to issue a Writ of Prohibition or a Writ in the nature of Prohibition or any other appropriate Writ or a direction prohibiting and restraining the Respondent from taking any steps or proceedings in pursuance of the said notices.

2. Heard the learned counsel for both the parties. Perused the record.

3. Admittedly, the Petitioner had submitted the returns regularly for the assessment years 1972-73 to 1983-84 and the assessment of income was finalised regularly. The notices under section 148 of Income Tax Act to make re-assessment was issued on 28/3/89 that is, more than 4 years after finalisation of the assessment for each of the said assessment years. The learned counsel for the Petitioner vehemently contended that the said notices could be issued only if the assessee would have failed to disclose the material facts necessary for the assessment. If there was no such failure and all the material facts were placed before the Assessment Officer and the assessments were finalised , the assessments could not be re-opened after expiry of 4 years. This point is squarely covered by the judgment of this Court in **Bhogwati Sahakari Sakhar Karkhana Ltd. v. Deputy Commissioner of Income Tax in (200[D4) 269 ITR 186.** With the identical facts in that case, this Court held that where there is no failure on part of Assessee to disclose material facts necessary for the assessment, the notice to re-assess under section 148 could not be issued after expiry of 4 years from the assessment year. The record reveals that the Petitioner had disclosed all

the deductions with the income-tax returns, necessary balance-sheets, Profit & Loss Account. No material was concealed. It is not even the case of the Revenue that any material which was necessary for the assessment was not disclosed. The Respondent No.1 issued the notice only because of the authority of the Supreme Court in Bazpur Co-operative Sugar Factory.

4. It may be noted that in **Commissioner of Income Tax v. Chhatrapati Sahakari Sakhar Karkhana Ltd. (2004) 270 ITR 1,** the Supreme Court distinguished the facts and rules obtained in Bazpur Co-operative Sugar Factory and in the legal provisions and rules obtained in Maharashtra. Their Lordships clearly held that the Non-refundable deposits, Refundable deposits, interest thereon, C.M.s Relief Fund, Hutment Fund are not the trading receipts of the Sugar Factory. Incidentally, the present Petitioner was the Petitioner before the Supreme Court also. As far as Area Development Fund is concerned, Their Lordships observed that the receipts always remained with the Assessee. However, for want of any specific material on record, Their Lordships left this point open for the fresh determination by the Tribunal. In Income-Tax Appeal No.9 of 1999 alongwith the group of other Appeals, this Court has recently given the similar directions.

5. In view of the above circumstances, the Respondent No.1 could not issue the notices to make re-assessment of the income for the assessment years 1972-73 to 1983-84 after expiry of 4 years from the assessment and the amounts collected by the Petitioner towards Non-refundable Deposits, Refundable Deposits, Hutment Fund and C.M.s Relief Fund are not liable to be added in income as they are not the trading receipts.

6. For the aforesaid reasons, we hold that the impugned notices are without jurisdiction and therefore, the same are liable to be quashed and set aside. Accordingly, they are quashed and set aside. The Petition is allowed. Rule made absolute in terms of prayer clause (a) and (b). No order as to Costs.

(S.RADHAKRISHNAN,J.)

(J.H.BHATIA, J.)